

1 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
2 A Limited Liability Partnership
3 Including Professional Corporations
4 GREG S. LABATE, Cal. Bar No. 149918
5 glabate@sheppardmullin.com
6 TYLER Z. BERNSTEIN, Cal. Bar No. 296496
7 tbernstein@sheppardmullin.com
8 650 Town Center Drive, 10th Floor
9 Costa Mesa, California 92626-1993
10 Telephone: 714.513.5100
11 Facsimile: 714.513.5130

12 Attorneys for Defendant
13 MARRIOTT HOTEL SERVICES, LLC

14 UNITED STATES DISTRICT COURT
15
16 NORTHERN DISTRICT OF CALIFORNIA
17

18 GABRIELA BUSTAMANTE, on behalf
19 of herself and all “aggrieved employees”
20 pursuant to Labor Code § 2698 et seq.,

21 Plaintiff,

22 v.

23 MARRIOTT HOTEL SERVICES, INC.,
24 a Delaware corporation; and DOES 1
25 through 10 inclusive,

26 Defendants.
27
28

Case No. 3:22-cv-08929-LB

[Santa Clara Superior Court Case No.
22CV400968]

[State Court
Complaint Filed: July 21, 2022
FAC Filed: November 17, 2022]

**STIPULATED PROTECTIVE
ORDER**

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

2. DEFINITIONS

2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c).

2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as their support staff).

2.4 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

2.5 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including,

1 among other things, testimony, transcripts, and tangible things), that are disclosed,
2 produced, or exchanged in this matter, or produced or generated in disclosures or
3 responses to discovery in this matter.

4 2.6 Expert: a person with specialized knowledge or experience in a matter
5 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
6 expert witness or as a consultant in this action.

7 2.7 House Counsel: attorneys who are employees of a party to this action.
8 House Counsel does not include Outside Counsel of Record or any other outside
9 counsel.

10 2.8 Non-Party: any natural person, partnership, corporation, association, or
11 other legal entity not named as a Party to this action.

12 2.9 Outside Counsel of Record: attorneys who are not employees of a party
13 to this action but are retained to represent or advise a party to this action and have
14 appeared in this action on behalf of that party or are affiliated with a law firm which
15 has appeared on behalf of that party.

16 2.10 Party: any party to this action, including all of its officers, directors,
17 employees, consultants, retained experts, House Counsel, and Outside Counsel of
18 Record (and their support staffs).

19 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
20 Discovery Material in this action.

21 2.12 Professional Vendors: persons or entities that provide litigation support
22 services (e.g., photocopying, videotaping, translating, preparing exhibits or
23 demonstrations, and organizing, storing, or retrieving data in any form or medium)
24 and their employees and subcontractors.

25 2.13 Protected Material: any Disclosure or Discovery Material that is
26 designated as "CONFIDENTIAL."
27
28

1 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material
2 from a Producing Party.

3 3. SCOPE

4 The protections conferred by this Stipulation and Order cover not only
5 Protected Material (as defined above), but also (1) any information copied or extracted
6 from Protected Material; (2) all copies, excerpts, summaries, or compilations of
7 Protected Material; and (3) any testimony, conversations, or presentations by Parties
8 or their Counsel that might reveal Protected Material. However, the protections
9 conferred by this Stipulation and Order do not cover the following information:

10 (a) any information that is in the public domain at the time of disclosure to a
11 Receiving Party or becomes part of the public domain after its disclosure to a
12 Receiving Party as a result of publication not involving a violation of this Order,
13 including becoming part of the public record through trial or otherwise; and (b) any
14 information known to the Receiving Party prior to the disclosure or obtained by the
15 Receiving Party after the disclosure from a source who obtained the information
16 lawfully and under no obligation of confidentiality to the Designating Party. Any use
17 of Protected Material at trial shall be governed by a separate agreement or order.

18 4. DURATION

19 Even after final disposition of this litigation, the confidentiality obligations
20 imposed by this Order shall remain in effect until a Designating Party agrees
21 otherwise in writing or a court order otherwise directs. Final disposition shall be
22 deemed to be the later of (1) dismissal of all claims and defenses in this action, with or
23 without prejudice; and (2) final judgment herein after the completion and exhaustion
24 of all appeals, rehearings, remands, trials, or reviews of this action, including the time
25 limits for filing any motions or applications for extension of time pursuant to
26 applicable law.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection.

Each Party or Non-Party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. The Designating Party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify – so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

Indiscriminate designations that are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber or retard the case development process or to impose unnecessary expenses and burdens on other parties) may expose the Designating Party to sanctions.

If it comes to a Designating Party's attention that information or items that it designated for protection do not qualify for protection, that Designating Party must promptly notify all other Parties that it is withdrawing the mistaken designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g., second paragraph of section 5.2(a) below, section 5.3, etc.), or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.

Designation in conformity with this Order requires:

(a) for information in documentary form (e.g., paper or electronic documents, but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the legend "CONFIDENTIAL" to each page that contains protected material. If only a portion or portions of the material on a

1 page qualifies for protection, the Producing Party also must clearly identify the
2 protected portion(s) (e.g., by making appropriate markings in the margins).

3 A Party or Non-Party that makes original documents or materials available
4 for inspection need not designate them for protection until after the inspecting Party
5 has indicated which material it would like copied and produced. During the inspection
6 and before the designation, all of the material made available for inspection shall be
7 deemed “CONFIDENTIAL.” After the inspecting Party has identified the documents
8 it wants copied and produced, the Producing Party must determine which documents,
9 or portions thereof, qualify for protection under this Order. Then, before producing the
10 specified documents, the Producing Party must affix the “CONFIDENTIAL” legend
11 to each page that contains Protected Material. If only a portion or portions of the
12 material on a page qualifies for protection, the Producing Party also must clearly
13 identify the protected portion(s) (e.g., by making appropriate markings in the
14 margins).

15 (b) for testimony given in deposition or in other pretrial or trial proceedings,
16 that the Designating Party identify on the record, within 30 days following receipt of
17 the deposition transcript, or before the close of the hearing, or other proceeding, all
18 protected testimony.

19 (c) for information produced in some form other than documentary and for
20 any other tangible items, that the Producing Party affix in a prominent place on the
21 exterior of the container or containers in which the information or item is stored the
22 legend “CONFIDENTIAL.” If only a portion or portions of the information or item
23 warrant protection, the Producing Party, to the extent practicable, shall identify the
24 protected portion(s).

25 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
26 failure to designate qualified information or items does not, standing alone, waive the
27 Designating Party’s right to secure protection under this Order for such material.
28

1 Upon timely correction of a designation, the Receiving Party must make reasonable
2 efforts to assure that the material is treated in accordance with the provisions of this
3 Order.

4 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

5 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
6 designation of confidentiality at any time. Unless a prompt challenge to a Designating
7 Party's confidentiality designation is necessary to avoid foreseeable, substantial
8 unfairness, unnecessary economic burdens, or a significant disruption or delay of the
9 litigation, a Party does not waive its right to challenge a confidentiality designation by
10 electing not to mount a challenge promptly after the original designation is disclosed.

11 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
12 resolution process by providing to the Designating Party written notice of each
13 designation it is challenging and describing the basis for each challenge. To avoid
14 ambiguity as to whether a challenge has been made, the written notice must recite that
15 the challenge to confidentiality is being made in accordance with this specific
16 paragraph of the Protective Order. The parties shall attempt to resolve each challenge
17 in good faith and must begin the process by conferring directly (in voice to voice
18 dialogue; other forms of communication are not sufficient) within 14 days of the date
19 of service of notice, unless the Parties otherwise agree to a different time period. In
20 conferring, the Challenging Party must explain the basis for its belief that the
21 confidentiality designation was not proper and must give the Designating Party an
22 opportunity to review the designated material, to reconsider the circumstances, and, if
23 no change in designation is offered, to explain the basis for the chosen designation. A
24 Challenging Party may proceed to the next stage of the challenge process only if it has
25 engaged in this meet and confer process first or establishes that the Designating Party
26 is unwilling to participate in the meet and confer process in a timely manner.

1 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
2 court intervention, the Designating Party shall file and serve a motion to retain
3 confidentiality under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-
4 5, if applicable) within 21 days of the initial notice of challenge or within 14 days of
5 the parties agreeing that the meet and confer process will not resolve their dispute,
6 whichever is earlier, or by such other date as the Parties may agree. Each such motion
7 must be accompanied by a competent declaration affirming that the movant has
8 complied with the meet and confer requirements imposed in the preceding paragraph.
9 Failure by the Designating Party to make such a motion including the required
10 declaration within the applicable time period shall automatically waive the
11 confidentiality designation for each challenged designation. In addition, the
12 Challenging Party may file a motion challenging a confidentiality designation at any
13 time if there is good cause for doing so, including a challenge to the designation of a
14 deposition transcript or any portions thereof. Any motion brought pursuant to this
15 provision must be accompanied by a competent declaration affirming that the movant
16 has complied with the meet and confer requirements imposed by the preceding
17 paragraph.

18 The burden of persuasion in any such challenge proceeding shall be on the
19 Designating Party. Frivolous challenges, and those made for an improper purpose
20 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
21 expose the Challenging Party to sanctions. Unless the Designating Party has waived
22 the confidentiality designation by failing to file a motion to retain confidentiality as
23 described above, all parties shall continue to afford the material in question the level
24 of protection to which it is entitled under the Producing Party's designation until the
25 court rules on the challenge.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the litigation has been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “CONFIDENTIAL” only to:

(a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A;

(b) the officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(d) the court and its personnel;

(e) court reporters and their staff, professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary

1 for this litigation and who have signed the “Acknowledgment and Agreement to Be
2 Bound” (Exhibit A);

3 (f) during their depositions, witnesses in the action to whom disclosure is
4 reasonably necessary and who have signed the “Acknowledgment and Agreement to
5 Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered
6 by the court. Pages of transcribed deposition testimony or exhibits to depositions that
7 reveal Protected Material must be separately bound by the court reporter and may not
8 be disclosed to anyone except as permitted under this Stipulated Protective Order.

9 (g) the author or recipient of a document containing the information or a
10 custodian or other person who otherwise possessed or knew the information.

11 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
12 OTHER LITIGATION

13 If a Party is served with a subpoena or a court order issued in other litigation
14 that compels disclosure of any information or items designated in this action as
15 “CONFIDENTIAL,” that Party must:

16 (a) promptly notify in writing the Designating Party. Such notification shall
17 include a copy of the subpoena or court order;

18 (b) promptly notify in writing the party who caused the subpoena or order to
19 issue in the other litigation that some or all of the material covered by the subpoena or
20 order is subject to this Protective Order. Such notification shall include a copy of this
21 Stipulated Protective Order; and

22 (c) cooperate with respect to all reasonable procedures sought to be pursued
23 by the Designating Party whose Protected Material may be affected.

24 If the Designating Party timely seeks a protective order, the Party served with
25 the subpoena or court order shall not produce any information designated in this
26 action as “CONFIDENTIAL” before a determination by the court from which the
27 subpoena or order issued, unless the Party has obtained the Designating Party’s
28

1 permission. The Designating Party shall bear the burden and expense of seeking
 2 protection in that court of its confidential material – and nothing in these provisions
 3 should be construed as authorizing or encouraging a Receiving Party in this action to
 4 disobey a lawful directive from another court.

5 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED
 6 IN THIS LITIGATION

7 (a) The terms of this Order are applicable to information produced by a
 8 Non-Party in this action and designated as “CONFIDENTIAL.” Such information
 9 produced by Non-Parties in connection with this litigation is protected by the
 10 remedies and relief provided by this Order. Nothing in these provisions should be
 11 construed as prohibiting a Non-Party from seeking additional protections.

12 (b) In the event that a Party is required, by a valid discovery request, to
 13 produce a Non-Party’s confidential information in its possession, and the Party is
 14 subject to an agreement with the Non-Party not to produce the Non-Party’s
 15 confidential information, then the Party shall:

16 (1) promptly notify in writing the Requesting Party and the Non-Party
 17 that some or all of the information requested is subject to a confidentiality agreement
 18 with a Non-Party;

19 (2) promptly provide the Non-Party with a copy of the Stipulated
 20 Protective Order in this litigation, the relevant discovery request(s), and a reasonably
 21 specific description of the information requested; and

22 (3) make the information requested available for inspection by the Non-
 23 Party.

24 (c) If the Non-Party fails to object or seek a protective order from this court
 25 within 14 days of receiving the notice and accompanying information, the Receiving
 26 Party may produce the Non-Party’s confidential information responsive to the
 27 discovery request. If the Non-Party timely seeks a protective order, the Receiving
 28

1 Party shall not produce any information in its possession or control that is subject to
2 the confidentiality agreement with the Non-Party before a determination by the court.
3 Absent a court order to the contrary, the Non-Party shall bear the burden and expense
4 of seeking protection in this court of its Protected Material.

5 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

6 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
7 Protected Material to any person or in any circumstance not authorized under this
8 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
9 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
10 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
11 persons to whom unauthorized disclosures were made of all the terms of this Order,
12 and (d) request such person or persons to execute the “Acknowledgment and
13 Agreement to Be Bound” that is attached hereto as Exhibit A.

14 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
15 PROTECTED MATERIAL

16 When a Producing Party gives notice to Receiving Parties that certain
17 inadvertently produced material is subject to a claim of privilege or other protection,
18 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
19 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
20 may be established in an e-discovery order that provides for production without prior
21 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
22 parties reach an agreement on the effect of disclosure of a communication or
23 information covered by the attorney-client privilege or work product protection, the
24 parties may incorporate their agreement in the stipulated protective order submitted to
25 the court.

12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

12.3 Filing Protected Material. Without written permission from the Designating Party or a court order secured after appropriate notice to all interested persons, a Party may not file in the public record in this action any Protected Material. A Party that seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request establishing that the Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled to protection under the law. If a Receiving Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-5(d) is denied by the court, then the Receiving Party may file the information in the public record pursuant to Civil Local Rule 79-5(e) unless otherwise instructed by the court.

13. FINAL DISPOSITION

Within 60 days after the final disposition of this action, as defined in paragraph 4, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing

1 Party (and, if not the same person or entity, to the Designating Party) by the 60 day
2 deadline that (1) identifies (by category, where appropriate) all the Protected Material
3 that was returned or destroyed and (2) affirms that the Receiving Party has not
4 retained any copies, abstracts, compilations, summaries or any other format
5 reproducing or capturing any of the Protected Material. Notwithstanding this
6 provision, Counsel are entitled to retain an archival copy of all pleadings, motion
7 papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence,
8 deposition and trial exhibits, expert reports, attorney work product, and consultant and
9 expert work product, even if such materials contain Protected Material. Any such
10 archival copies that contain or constitute Protected Material remain subject to this
11 Protective Order as set forth in Section 4 (DURATION).

12 14. ENFORCEABLE PENDING ENTRY

13 After this Stipulated Protective Order has been signed by counsel for all
14 parties, it shall be presented to the Court for entry. Counsel for the Parties agree to
15 be bound by the terms set forth herein with regarding to any Protected Material that
16 already has been produced in this litigation, and which may be produced in this
17 litigation, before the Court enters this Order.

18 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

19 //

20 //

21 //

22 //

23 //

24 //

25 //

26 //

27 //

28

1 Dated: June 27, 2023

GAINES & GAINES

2 By: /s/ Daniel Gaines

3 Daniel Gaines

4 Evan Gaines

5 Alex Katofsky

Attorneys for Plaintiff

6 GABRIELA BUSTAMANTE

7 Dated: June 27, 2023

SHEPPARD, MULLIN, RICHTER & HAMPTON
8 LLP

9 By /s/ Tyler Z. Bernstein

10 GREG S. LABATE

11 TYLER Z. BERNSTEIN

12 Attorneys for Defendant

13 MARRIOTT HOTEL SERVICES, LLC

EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
 _____ [print or type full address], declare under penalty of perjury that
 I have read in its entirety and understand the Stipulated Protective Order that was
 issued by the United States District Court for the Northern District of California on
 [date] in the case of Gabriella Bustamante v. Marriott Hotel Services, Inc., Case No.
 22-cv-08929-LB. I agree to comply with and to be bound by all the terms of this
 Stipulated Protective Order and I understand and acknowledge that failure to so
 comply could expose me to sanctions and punishment in the nature of contempt. I
 solemnly promise that I will not disclose in any manner any information or item that is
 subject to this Stipulated Protective Order to any person or entity except in strict
 compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court
 for the Northern District of California for the purpose of enforcing the terms of this
 Stipulated Protective Order, even if such enforcement proceedings occur after
 termination of this action.

I hereby appoint _____ [print or type full name] of
 _____ [print or type full address and
 telephone number] as my California agent for service of process in connection with
 this action or any proceedings related to enforcement of this Stipulated Protective
 Order.

Date: _____


City and State where sworn and signed: _____

Printed name: _____

Signature: _____

1 PURSUANT TO STIPULATION, IT IS SO ORDERED.

2
3 DATED: June 27, 2023

4 
5 _____
6 United States District Court Judge
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28